IN THE HIGH COURT OF BOMBAY AT GOA
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SECOND APPEAL NO. 3 OF 2003

Ms. Telma de Souza
Gonsalves, major of age,
spinster, landlady,
r/o House no.1, Vancio
Vaddo, Guirim, Bardez,
Goa. ... Appellant

versus

1. Shri Prakash Harischandra
Anvekar, s/o late
Harischandra Anvekar,
major of age, occupation,
service,
married and his wife,

2. Smt. Prakash Harishchandra
Anvekar, alias Mrs.
Sharada Prakash Anvekar,
major of age, occupation
service, both r/o House
No.176, Sorvem, Guirim,
Bardez, Goa. ... Respondents.

Shri A. D. Bhobe, advocate for the appellant.

CORAM : F.I. REBELLO, J.

DATE : 13th June, 2003.

ORAL ORDER

The appellant herein was the original plaintiff and the respondents herein the original defendants. The appellant filed a suit against the respondents on the ground that the respondents had encroached in the property of the appellant and built a compound wall thereby encroaching on the area admeasuring 24 sq.mts. belonging to the appellant herein. The case of the respondents was that they had been declared mundkars and, as such, they had exercised their option to purchase the property and had purchased 324 sq. mts. from

their landlady one Berta. The construction it was contended, was on the property purchased and there was no encroachment.

On the evidence led by the parties, the trial Court by its judgment dated 11th December, 2000, held that the appellant herein was able to establish that the respondents had encroached on the property of the appellant herein and consequently, directed demolition of the compound wall. The reliance for that purpose was mainly placed on the evidence of P.W.3 a Civil Engineer.

2. The respondent herein being aggrieved by the said order preferred an appeal before the Additional District Judge, Mapusa, which appeal was numbered as Regular Civil Appeal No.10 of 2001. The learned Additional District Judge reversed the order of the trial Court holding that the appellant herein had not been able to establish that the respondents had encroached on her property. It is this order which is the subject-matter of the present appeal.

The learned Additional District Judge while coming to the said conclusion held that P.W.3 himself had not prepared the plan based on which he had deposed. The basis on which the learned Additional District Judge proceeded on the footing was that P.W.3 has been examined as an expert, but however he had not prepared the plan as he ought to have, on which he had opined that there was an encroachment; that P.W.3 ought to

have himself prepared the plan in juxtaposition with the survey plan to prove the area encroached upon. That has not been done.

The learned Additional District Judge has correctly addressed herself to the controversy and pursuant to the controversy has found that the evidence led by P.W.3 could not be considered and consequently held that that evidence had to be rejected. Once that evidence was rejected, there was no other evidence except the contesting evidence of both the parties regarding encroachment. To my mind, no fault lies with the reasoning adopted by learned Additional District Judge. In the light of that no questions of law are involved in this Second Appeal and least of all substantial questions. Considering that Second Appeal is rejected.

F. I.REBELLO, J.

mc.